

## MONTANA SEVENTH JUDICIAL DISTRICT COURT RULES

### DAWSON, MCCONE, RICHLAND, PRAIRIE, AND WIBAUX COUNTIES

#### RULE 1 - DEPARTMENT AND ASSIGNMENT OF CASES

A. The District Court is divided into 2 departments. Department 1 consists of Dawson, Wibaux and Prairie Counties. Department 2 consists of Richland and McCone Counties. Judge Richard A. Simonton, or his successor, is the presiding judge of Department 1. Richard G. Phillips, or his successor, is the presiding judge of Department 2. All actions filed shall initially be assigned to the presiding judge of the department in which the action is filed subject to transfer as set forth below.

B. A Petition for Consolidation, pursuant to Rule 42 (a), Montana Rules of Civil Procedure, shall be filed in each action to be consolidated. The judge in whose department the initial action was filed shall determine whether consolidation shall be ordered and all actions thus consolidated shall be assigned to that department.

C. The work in the District shall be interchangeable between the judges thereof during the absence or disability of either of them or upon the request of either judge. Any judge making any order for a judge of another department will be presumed to have acted with the consent of that judge. Actions by one department relative to a case assigned to the other department shall not, by that fact alone, result in a transfer of the case.

D. Either judge may, with the consent of the other and after stating the basis therefor, transfer any action, matter or proceeding to the other department. Notice of said transfer shall be provided all parties.

E. In the absence of judicial disqualification, no cause may be transferred from one department to the other without the Court's order of approval, considered and signed by both judges. In the event of a disqualification, the first judge invited to assume jurisdiction shall be the other judge of the District, unless he has already recused himself or been disqualified.

#### RULE 2 - SCHEDULE FOR LAW AND MOTION

A. Law and Motion shall be set and heard on the following schedule: Department 1: Dawson County — every Tuesday beginning at 8:15 a.m.; Wibaux County — first Wednesday beginning at 9:00 a.m.; Prairie County — first Wednesday beginning at 2:00 p.m.; Department 2: Richland County — every Tuesday beginning at 9:00 a.m.; McCone County — first Thursday beginning at 9:00 a.m.

In addition to the regularly-scheduled Law and Motion, on the first Monday of each month, the presiding judge of Department 1 will hold Law and Motion in Richland County and the presiding judge of Department 2 will hold Law and Motion in Dawson County.

B. The Court will hear uncontested matters, judgments by default, probate matters, and appropriate ex parte matters beginning at 9:00 (8:15 Dawson County). Criminal matters will be heard beginning at 10:00 (9:00 Dawson County) or as soon after uncontested matters as possible. Matters which counsel expect will be contested or are expected to take more than 15 minutes should be scheduled with the Court. All matters shall be calendared with the Clerk of the Court by 5:00 p.m. the day before Law and Motion. If time permits, uncalendared matters may be presented and heard after all calendared matters have been disposed of. Uncontested or emergency matters may be presented to the Court at such other times as the Court is available and willing to hear them.

#### RULE 3 - HEARINGS ON MOTIONS

NOTE: See UDCR 2

A. When counsel desire oral argument on a motion, other than a motion for summary judgment, they shall so state in a separate document entitled "Request for Oral Argument," including therein the reasons in support of oral argument and why they are unable to fully and satisfactorily articulate their position in a brief.

B. Counsel shall include with their Request for Oral Argument a proposed Order Granting Oral Argument. In the event the Court determines that oral argument would be beneficial to a determination of the motion and grants oral argument, the moving party has the duty to schedule such argument with the appropriate Court personnel and to notify opposing counsel.

C. If the Court determines on its own motion that oral argument would be beneficial to a determination of the motion, it shall so order and will notify the parties of the time and date of hearing.

D. Scheduled hearings on motions pending may be continued by the Court on its own initiative or upon the written motion of any party with notice to all adverse parties. All such motions to continue must be submitted in writing and accompanied by an appropriate formal order prepared for the Court's approval.

E. Time settings for hearing on contested motions will be obtained exclusively from the individual designated by the Court.

F. The proponent of any motion filed with the Court shall be responsible for submitting a proposed order granting the relief sought. Such proposed order shall be due at the time that the motion is deemed submitted to the Court.

#### RULE 4 - SERVICE OF PROCESS AND PAPERS

A. Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof exists as prescribed in the Montana Rules of Civil Procedure, or other applicable statute, shall be filed with the clerk promptly and in any event before any action is to be taken thereon by the Court or the parties.

B. Whenever the Clerk of Court is required to furnish notice of any pleading, judgment or order, all necessary copies of such pleading, judgment or order shall be furnished to the Clerk together with properly addressed and stamped envelopes by the party requesting such judgment or order.

#### RULE 5 - SCHEDULING ORDERS; COMMUNICATIONS WITH THE COURT

A. Not later than 120 days after the filing of a Complaint in a civil (DV) or dissolution (DR) action, counsel for the plaintiff or petitioner shall file a written request for a scheduling order which shall be issued by the Court in accord with Rule 16(b), M.R.Civ.P. Failure to file such a request in a timely manner may result in sanctions, including dismissal. Counsel for the Defendant or Respondent may also move for a Scheduling Order in their discretion.

B. The Court will not receive letters or other communication from counsel or parties which do not indicate on their face that copies have been sent to opposing counsel.

C. There will be not ex parte discussion with the Court of substantive issues involved in pending or anticipated cases without the presence of or notice to all opposing counsel, or without prior approval or stipulation by such counsel. A violation of this rule may result in a disqualification of the judge for cause as well as imposition of sanctions against the offending attorney or party.

D. In the event a judge has under advisement any matter including, but not limited to, a motion or decision in a bench trial for a period of more than thirty (30) days, each party affected thereby may send to the judge a reminder letter particularly describing the matter under advisement and stating the date the matter was taken under advisement without fear of adversely affecting their position in the matter.

#### RULE 6 - TRIAL CALENDAR AND CONDUCT OF TRIALS

A. Following a scheduling conference and an order therein, said cause and such others as the Court shall direct, shall be placed by the clerk upon the regular trial calendar. Notwithstanding the above, the Court may, in its discretion and upon such notice as the Court deems reasonable, set down for trial any cause coming to issue.

B. Non-jury cases need not await a call of the jury trial calendar to be set for trial; such cases may be set for trial on order of the Court upon motion of a party. Reasonable notice shall be given to opposing parties. The Court, on its own motion, may set such cases for trial on a date convenient to the Court upon an order giving the respective parties reasonable notice of the date said case will be tried.

The foregoing rule shall apply in like manner where the presiding judge shall have been called in and assumed jurisdiction.

C. Trial briefs shall be submitted as required in the pre-trial order.

D. When, after the day is fixed for the trial of any cause, either party shall desire a continuance, he shall give his adversary five days' notice that application will be made therefor and the grounds thereof. For good cause, the time may be shortened. Continuances may be granted on the Court's own motion or upon motion of counsel or a party, if such a continuance does not inconvenience the Court in the process of the trial calendar. Continuances, even when stipulated to by counsel, will not be routinely granted.

E. (1) During any contested hearing, no argument or motion to the Court, other than a formal objection, will be entertained unless the attorney making the same first arises in his place to address the Court and the Court grants a request for argument. Argument, when permitted by the Court, shall cease on completion of rebuttal.

The party whose duty it is to first offer proof in any trial or proceeding shall have the right to open and may close the argument. Should the adverse party waive argument, no rebuttal will be permitted.

(2) In the examination of witnesses, but one attorney for each party will be permitted to examine or cross-examine the same witness, except by prior permission of the court.

F. There shall be no vocal challenge of jurors except for cause. Peremptory challenges shall be exercised or waived by counsel indicating on a jury list to be kept by the clerk what jurors are peremptorily challenged.

G. Jurors shall be allowed to take notes unless the presiding judge, considering the nature of the case, orders otherwise. No juror shall be required to take notes. Jurors' notes shall be collected by the bailiff at the end of each court day and returned to the jurors at the beginning of the next day. Jurors shall be allowed to have their notes during deliberation pursuant to Sec. 25-7-404, MCA.

H. Any attorney, party, or witness who anticipates that any witness to be called in a trial by jury might refuse to answer a question on the grounds that the answer may tend to incriminate him or her, shall so advise the Court in advance of such witness testifying. The court shall thereupon hold a hearing outside of the presence of the jury to determine if, in fact, such will be the case. An appropriate order will then be entered for the purpose of avoiding, if possible, "taking the 5th" in the presence of a jury.

I. If the attorney of either party offers himself as a witness on behalf of his client and gives evidence on the merits of an issue, he shall not argue the case or sum it up to the jury unless by permission of the Court and then shall not comment on his own testimony.

J. Not more than three witnesses for each side will be allowed to testify as to character in any case, civil or criminal, without leave of Court first obtained.

K. Not more than three non-expert witnesses for each side will be allowed to testify concerning parenting practices and abilities in any contested action concerning custody or visitation of children, without leave of Court first obtained.

L. In any case, civil or criminal, no agreement or stipulation between the parties or their attorneys with respect to the proceedings in any cause will be considered for any purpose by the Court unless made in open court in the record or entered on the minutes, or unless in writing, subscribed by the party against whom it is sought to be enforced, or by his attorney. It shall be the duty of the party relying upon any such minute entry to see that it is duly made.

## **RULE 7 - COURT RECORDS**

A. The clerk shall not permit any files or documents to be removed from the office without obtaining receipt from any party removing any file or court record.

B. The records and files in abuse/neglect actions shall not be withdrawn, examined, or inspected by anyone except as allowed under 41-3-205 M.C.A. The records of the youth court are governed under Sec. 41-5-601 *et seq.*, M.C.A. The files in adoption records may not be withdrawn, examined or inspected by anyone except upon order of the Court.

C. No will, bond or undertaking shall be taken from the clerk's office under any circumstances, and no judgment before it is recorded.

## **RULE 8 - FILINGS**

A. All motions and briefs shall be filed with the Clerk of District Court.

B. Upon the filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or any other pleading requiring leave of Court to file, the movant shall file with the motion a copy of the proposed pleading or amendments and lodge the original with the clerk of court. If leave to file is granted, the clerk shall file the original forthwith.

C. Except as provided in UDCR No. 4 no discovery documents may be filed with the clerk of court without prior leave of Court. Upon receipt of a deposition pursuant to UDCR No. 4, after leave of Court has been granted, the clerk shall open it and file it in the open file, unless otherwise ordered. The clerk shall notify all counsel when a deposition has been filed.

D. When a demand for a jury trial is incorporated in a pleading, counsel are to so indicate in the title as well as the body of the pleading.

E. Any papers filed which do not conform to Rule 10 or Rule 11 of the Montana Rules of Civil Procedure may be stricken by the Court on its own initiative upon such terms as to the Court may appear just.

F. When any written order is made by the Court, it must immediately thereafter be presented to the clerk for filing.

G. A copy of any order, the original of which is being taken out for service, shall be presented to the clerk for a minute entry immediately upon the signing thereof.

H. All briefs required by rule, regulation or by Court order to be filed by a date certain shall be filed by 5:00 p.m. by the date certain. Except where approval from the Court is obtained prior to the date certain, and notice thereof is provided to each party by the party seeking an extension of time, filing beyond the date certain may result in the Court's disregarding the brief and citing the delinquent party's attorney for contempt.

I. No individual brief shall exceed 25 pages in length, exclusive of indexes and appendixes, without prior leave of the Court.

J. Citations of authority must include photocopies of all cases referred to which are not found in the Pacific or Montana reporting services available in the Dawson or Richland County Law Library.

NOTE: See UDCR 5

## **RULE 9 - SETTLEMENT CONFERENCES AND PRE-TRIAL**

A. All civil actions set for trial may be subject to a settlement conference upon order of the court for cause shown. All criminal actions set for trial may be subject to a resolution conference as set by the Court.

B. If a pretrial conference should be deemed unwarranted or unnecessary in any cause, the Court will order the cause to be taken from the pretrial calendar and tried without a pretrial order.

## **RULE 10 - VOIR DIRE**

A. The length and conduct of voir dire examination shall not exceed one (1) hour per side without prior leave of Court.

B. Only one attorney for each party shall be allowed to question the prospective jurors on voir dire.

C. The only proper purpose of voir dire is to select a panel which will fairly and impartially hear the evidence presented and render a just verdict, and to determine the grounds for any challenge for cause. Accordingly, the Court, in exercising its discretion, will discourage counsel from:

1. Asking questions of an individual juror that are susceptible of being asked collectively.
2. Asking questions covered by and answered in the juror questionnaire, except to explore some answer in great depth.
3. Repeating questions asked and answered.
4. Using voir dire for the purpose of attempting to instruct the jury on the law.
5. Using voir dire for the purpose of arguing the case.
6. Asking a juror what his verdict might be under any hypothetical situation, based upon expected evidence or otherwise.

## **RULE 11 - ATTORNEYS**

A. Unless appearing specifically on behalf of one of the attorneys of record, no attorney, unless the attorney's name appears on the pleadings in the case, may participate in any proceedings in the case until the attorneys' name has been entered of record as one of counsel.

B. In case of a dispute over the authority of an attorney to represent a party to a proceeding pending before the Court, the Court will not recognize the right of the attorney to appear in such proceedings unless said attorney has a retainer in writing, signed by the client, filed in the record of the case, or unless the party has personally signed the pleadings by virtue of which the attorney appears therein.

C. No attorneys may withdraw from any case, civil or criminal, except by consent of the client or by leave of Court after notice served on the parties and opposing counsel. This provision is subject to Sections 37-61-404, 405, MCA, and UDCR 10.

D. Attorneys will not be permitted to address a witness on the stand in any manner except to propound the question to which an answer is desired. Attorneys will not be permitted to address each other during a trial or argument except by permission of the Court.

E. From six months after the time for appeal from any final judgment or decree has expired, it shall be presumed that any party who was previously represented by counsel is no longer represented by

such counsel in that particular matter. This rule shall not be interpreted to prohibit continued representation in such matter if the client and attorney agree nor is it intended to prohibit earlier termination of the attorney-client relationship upon proper notice.

## **RULE 12 - ATTORNEY'S FEES**

A. In fixing attorney's fees, the following rules of evidence shall be regarded:

In all uncontested cases where the same are recoverable by virtue of an y statute, or left to be fixed by the Court or by agreement of the parties:

On all sums up to \$1,000.00 — 33.33%.

On all sums over \$1,000.00 but not in excess of \$3,500.00 — \$333.33 plus 20% of the excess over \$1,000.00.

On all sums over \$3,500.00 but not in excess of \$7,500 — \$833.33 plus 10% of the excess over \$3,500.00.

On all sums over \$7,500.00 — \$1,233.33 plus 1% of the excess over \$7,500.00.

The minimum fee on all foreclosure proceedings shall be \$750.00.

Extra fees may be allowed in the discretion of the Court.

In all contested actions and proceedings, the Court will determine a fee commensurate with the character of the litigation and the amount of legal work involved.

When an attorney acts as Personal Representative and does not employ counsel, a fee equal to one and one-half of the amount fixed by statute for Personal Representatives will be allowed. In guardianship, Conservatorship and trustee matters, the Court will allow reasonable fees for services rendered. Extra fees may be allowed in contested cases or in cases of unusual legal work. This rule may be suspended by any judge presiding, and in any case he deems advisable.

B. In all cases, contested or uncontested, where attorney's fees are requested in the pleadings, there must be competent evidence submitted to the Court from which the Court can determine reasonable attorney fees for the services rendered. Not less than ten days prior to the date of hearing for determination of attorney's fees in any case, the party seeking an award of attorney fees shall file and serve upon opposing counsel an affidavit itemizing the claim. The opposing party shall within five (5) days thereafter file a request for hearing thereon. Failure to file such a request shall be deemed a waiver of the right to a hearing on fees. In a contested proceeding, receipt of evidence pertaining to attorney's fees shall be deferred until the final decision or order on the merits of the case has been issued by the Court.

## **RULE 13 - PHOTOGRAPHY AND TELEVISION**

A. Broadcasting, televising, recording, taking photographs in the courtroom and areas immediately adjacent thereto during session of court, or recesses between sessions, shall be allowed only with prior notice to, and specific permission of, the presiding judge. All equipment used and persons using it shall remain behind the bar. No flash lights, other lighting equipment, or large microphones shall be used. Photographers, television cameras, and other recording devices, when allowed, shall remain stationary, and shall be used so as to not disrupt the proceedings. No photographs or televising of the members of a jury shall be permitted. No photograph or image of a witness may be used without the permission of the witness.

## **RULE 14 - TELEFAX FILINGS**

The filing of any document with the clerk of court that may be done by mail may be done by telefax transmission subject to the provisions of this rule provided such clerk has access to a telefax receiver.

A. The date and time of receipt of the transmission by the clerk of court shall be the date and time of filing. If the original is not served on the same day as the telefax transmission, service of the telefax document must be made as provided in Rule 5, Mont.R.Civ.Pro. It is the obligation of the person telefaxing any document to arrange for it to be delivered to the clerk of court's office. A telefaxed document must show all necessary signatures or it will not be filed by the clerk.

B. The sender shall, on the date of the telefax transmission, mail the original of whatever is sent by telefax to the clerk of court by first class mail. The original must be signed pursuant to Rule 11, Mont.R.Civ.Pro. The original of the document shall be filed by the clerk and the date of filing shall be deemed to be the date of the filing of the telefax transmission. Service of the original must be made as provided in Rule 5, Mont.R.Civ.Pro. The certificate of Service must reflect that a telefax transmission was sent to the clerk of court, and the date of such transmission. Unless an

order of court is obtained extending the time, failure of the clerk to receive the signed original within five (5) working days shall cause the telefaxed document to be stricken and it shall be of no force or effect whatever. It shall be the obligation of the party filing the telefax document to insure that the original is received by the clerk of court within the allotted five (5) working days.

C. The use of telefax equipment shall not change or delay the required payment of fees. It shall be the obligation of the person filing the telefaxed document to pay any required fees in the manner and within the time required by the clerk of court. It shall be the obligation of the person telefaxing any document to pay any costs associated with use of telefax equipment or telephone services.

## **RULE 15 - ADOPTION MATTERS**

In all adoption matters the investigation required by Sec. 40-8-122(1), M.C.A. (1985), will be ordered by the Court unless excused by (4) of that section. It is the obligation of counsel to present to the Court an order for such an investigation. The investigation will then be considered for waiver by the Department of Family Services if the petitioner is a stepparent of a member of the child's extended family. Whenever the Court signs an order for such an investigation by the State Department of Social and Rehabilitative Services, it shall be the duty of counsel to mail or deliver a conformed copy of the Petition for Adoption and the Order for Investigation to: Dept. of Family Services, 221 5<sup>th</sup> Street Southwest, Sidney, MT 59270; Dept. of Family Services, Box 880, Miles City, MT 59301 (For Wibaux County Only).

## **RULE 16**

Each of the parties to a domestic relations action shall at or prior to the time fixed for hearing, upon any application for temporary alimony, support money, or other allowance pendente lite, and modification proceedings, as well as pretrial hearing on contested domestic relations matters, submit to the Court an affidavit in the form hereinafter set forth, including the questions hereinafter set forth and answers thereto:

### **TITLE OF COURT AND CAUSE**

\_\_\_\_\_, being first duly sworn, deposes and says: That he/she is the petitioner/respondent in the above entitled action; that he/she has fully and fairly stated the facts of the case to verily believe that he/she has a good and sufficient cause of action/defense, and that he/she makes the following statements of the fact:

(Here set forth information in the following manner and form.)

### **A. General Background Information.**

1. Name
2. Address
3. Date of birth
4. Date of marriage and date of separation
5. Employment and description of duties
6. Pay period and amount of pay
7. Itemized deductions each pay period
8. Necessary monthly expenses showing that portion thereof attributable to a minor child or children
9. Education
10. Health
11. Future employment plans with estimated income
12. Assets with assigned value and basis of value
13. Liabilities

a. Name and address of creditor

b. Amount owing and repayment schedule

14. Statement of amounts received during marriage from inheritance, gifts, insurance proceeds, etc.

### **B. Spouse seeking custody (omit if not asking custody)**

1. Amount of child support requested
2. Hospitalization and medical plan, including amounts not covered by insurance requested
3. Details of visitation rights requested
4. Calculations justifying child support per the child support guidelines

### **C. Spouse not seeking custody (omit if not applicable)**

1. Amount of child support party is willing to pay
2. Hospitalization and medical plan, including amounts not covered by insurance party is willing to pay
3. Description of visitation rights requested
4. Calculations justifying child support per the child support guidelines

- D. Spouse seeking maintenance (omit if not asking for maintenance)
1. Amount
  2. Duration
  3. Reasons
- E. Spouse opposing maintenance (omit if not appropriate)
1. Reasons
  2. Alternative to maintenance
- F. Proposed property settlement with assigned values and liabilities (Indicate if proposed property settlement is in lieu of or in addition to maintenance in the appropriate case.)
- G. Attorney fees and costs if requested from other party

\_\_\_\_\_  
Signature of party furnishing information and verification

If appropriate, include the following:

1. Copies of federal and state income tax returns
2. Financial statements for the past three years
3. Any reports that have been prepared by experts
4. If expert witnesses are anticipated, set out their capsuled testimony
5. Other witnesses—set out their capsuled testimony
6. If legal issues are going to be presented to the Court, specify the issues
7. Estimate the time required for formal hearing

## **RULE 17**

Before the judge will accept any plea of guilty, the attorney for the defendant shall file with the court a fully executed document in the form hereinafter set forth and shall serve a copy thereof upon the county attorney and the defendant.

NOTE FROM PUBLISHER: *Due to limited space, we have not included the applicable form. Please contact the local district court for the proper format.*

## **RULE 18 - CLOSING ESTATE WITH FOREIGN PERSONAL REPRESENTATIVE**

In those probate matters in which a foreign personal representative is qualified under the provisions of Sec. 72-4-303 et. seq., upon completion of such matter the attorney or the foreign personal representative must file with the Court a certificate of completion. Such certificate shall be substantially in the following form:  
(CASE CAPTION)

1. I am the (attorney, personal representative) in the above matter.
2. The inventory of Montana property has been filed.
3. The inheritance tax application has been filed and all taxes due the state have been paid.
4. All property has been distributed to those persons entitled thereto.

Upon the filing of such certificate, the Court shall issue its order closing the file.